

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IAN ANTHONY BULANDR,
Plaintiff,

v.

PELICAN BAY STATE PRISON,
Defendant.

Case No. [16-cv-2405-TEH](#)

ORDER OF DISMISSAL WITH LEAVE
TO AMEND

Plaintiff, an inmate at Pelican Bay State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. His complaint is now before the Court for initial screening pursuant to 28 U.S.C. § 1915A.

I

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pleadings filed by pro se litigants, however, must be liberally construed. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010);

1 Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir.
2 1990).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must
4 allege two essential elements: (1) that a right secured by the
5 Constitution or laws of the United States was violated, and (2)
6 that the alleged violation was committed by a person acting under
7 the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

8 II

9 Plaintiff states that he has received inadequate medical
10 care.

11 Deliberate indifference to serious medical needs violates
12 the Eighth Amendment's proscription against cruel and unusual
13 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin
14 v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other
15 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136
16 (9th Cir. 1997) (en banc). A determination of "deliberate
17 indifference" involves an examination of two elements: the
18 seriousness of the prisoner's medical need and the nature of the
19 defendant's response to that need. Id. at 1059.

20 A "serious" medical need exists if the failure to treat a
21 prisoner's condition could result in further significant injury
22 or the "unnecessary and wanton infliction of pain." Id. The
23 existence of an injury that a reasonable doctor or patient would
24 find important and worthy of comment or treatment; the presence
25 of a medical condition that significantly affects an individual's
26 daily activities; or the existence of chronic and substantial
27 pain are examples of indications that a prisoner has a "serious"
28 need for medical treatment. Id. at 1059-60.

1 A prison official is deliberately indifferent if he or she
2 knows that a prisoner faces a substantial risk of serious harm
3 and disregards that risk by failing to take reasonable steps to
4 abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The
5 prison official must not only "be aware of facts from which the
6 inference could be drawn that a substantial risk of serious harm
7 exists," but he "must also draw the inference." Id. If a prison
8 official should have been aware of the risk, but was not, then
9 the official has not violated the Eighth Amendment, no matter how
10 severe the risk. Gibson v. County of Washoe, 290 F.3d 1175, 1188
11 (9th Cir. 2002). "A difference of opinion between a prisoner-
12 patient and prison medical authorities regarding treatment does
13 not give rise to a § 1983 claim." Franklin v. Oregon, 662 F.2d
14 1337, 1344 (9th Cir. 1981).

15 Plaintiff states that he has been denied medical care for
16 his chronic psoriasis and eczema. Plaintiff identifies eight
17 Defendants but in the body of the complaint only describes the
18 actions of one Defendant. He states that Nurse Risenhoover
19 denied treatment by refusing creams and ointments that has been
20 working well for plaintiff. As a result he suffers from
21 bleeding, scabbing, and pain. Liberally construed this is
22 sufficient to state a claim against Risenhoover.

23 However, Plaintiff has failed to present any allegations
24 against the remaining Defendants. The complaint will be
25 dismissed with leave to amend to identify the specific actions of
26 the other Defendants and describe how they violated Plaintiff's
27 constitutional rights. Simply attaching exhibits is
28 insufficient. Failure to amend will result in this case

proceeding solely against Risenhoover. If plaintiff does file an amended complaint he must include the allegations against Risenhoover.

III

For the foregoing reasons, the Court hereby orders as follows:

1. Plaintiff's Complaint is DISMISSED WITH LEAVE TO FILE A FIRST AMENDED COMPLAINT, within twenty-eight days containing all related claims against all Defendants that Plaintiff wishes to proceed against in this action. The pleading must be simple, concise and direct and must state clearly and succinctly how each and every Defendant is alleged to have violated Plaintiff's federally-protected rights. See Leer, 844 F.2d at 634. The pleading must include the caption and civil case number used in this order and the words COURT ORDERED FIRST AMENDED COMPLAINT on the first page. Plaintiff is advised that he must file all of his claims in one complaint and not present them piecemeal to the Court in various letters and other documents. Failure to file a proper First Amended Complaint within twenty-eight days of this order will result in the dismissal of all Defendants except Risenhoover.

2. Plaintiff is advised that the First Amended Complaint will supersede the original Complaint and all other pleadings. Claims and defendants not included in the First Amended Complaint will not be considered by the Court. See Lacey v. Maricopa County, 693 F.3d 896 (9th Cir. 2012) (en banc) ("For claims dismissed with prejudice and without leave to amend, we will not require that they be repled in a subsequent amended complaint to

1 preserve them for appeal. But for any claims voluntarily
2 dismissed, we will consider those claims to be waived if not
3 repled.").

4 3. It is Plaintiff's responsibility to prosecute this
5 action. Plaintiff must keep the Court informed of any change of
6 address by filing a separate paper with the Clerk headed "Notice
7 of Change of Address," and must comply with the Court's orders in
8 a timely fashion. Failure to do so may result in the dismissal
9 of this action for failure to prosecute pursuant to Federal Rule
10 of Civil Procedure 41(b).

11 IT IS SO ORDERED.

12 Dated: 6/15/2016

13 

14 THELTON E. HENDERSON
15 United States District Judge

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